

Section 7112(d) of the Statute provides for the consolidation of existing units:

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

A. Consolidation of Units under Executive Order 11491, as amended

Consolidation of units originally resulted from a recommendation submitted by agencies and labor organizations in 1975 to the Federal Labor Relations Council (Council) when it considered proposing amendments to Executive Order 11491. The Council adopted a policy which provided for the consolidation of existing units into a single more comprehensive unit. The Council concluded that this policy would reduce fragmentation in bargaining unit structures and foster the development of a sound Federal labor-management relations program.

1. Standard:

The Council set forth several guidelines for unit consolidation that later formed the basis for the initial implementing regulations. Although the implementing regulations have been streamlined and revised, the guidelines remain valid:

- a. An agency and a labor organization may agree bilaterally to consolidate, with or without an election, those bargaining units represented by the labor organization within the agency.
- b. The proposed consolidated unit must conform to the appropriate unit criteria.
- c. If there is no bilateral agreement, either party may petition to consolidate its units.

- d. A consolidation may occur with or without an election.
- e. Affected employees should be given adequate notice of a proposed bilateral consolidation, with the right to petition to hold an election on the issue of the proposed consolidation.
- f. A labor organization seeking an election on a proposed consolidation of existing units does not lose its status as the exclusive representative in the existing unit if the employees reject the consolidation.
- g. Election bars, certification bars, and agreement bars do not apply when parties seek to consolidate existing exclusive recognitions.
- h. The procedure for consolidating a labor organization's existing exclusively recognized units applies only to situations where there is no question as to whether the union represents the employees in the proposed consolidated unit.

2. Regulations:

The Assistant Secretary's regulations that implemented section 10(a) of Executive Order 11491, as amended, did not include a provision that specifically permitted the activity(ies) or the agency to file a petition to consolidate existing exclusively recognized units unless there was a bilateral agreement to do so. On the other hand, neither the Executive Order nor the implementing regulations prohibited an agency from filing a consolidation petition absent a request to recognize such a unit.

B. Consolidation Provisions under the Statute

Consistent with section 7112(d), the following elements must be present in order for consolidation to occur:

- a. There are two or more units in the same agency;
- b. A labor organization holds exclusive recognition for these units;
- c. A petition is filed by the agency or the labor organization; and
- d. The larger, consolidated unit is appropriate pursuant to section 7112(a) of the Statute.

Thus, the plain language of the Statute provides for a petition to be filed by an agency or a union. However, the Statute also requires that the petition be for units “for which a labor organization is the exclusive representative.” The legislative history of the Statute is clear that agencies are allowed to file petitions to consolidate, [See *Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978*, S. Rep. No. 95-969, at 763 (1978) and H. Rep. No. 95-1403, at 693] and that section 7112(d) “should better facilitate the consolidation of small units.” [124 Cong. Rec. H 9634 (daily ed. Sept. 13, 1978) (statement by Rep. Udall)]. It is not clear, however, whether the unions must agree to the consolidation. The legislative history sheds no light on this issue.

The current regulations eliminated any pre-filing requirements for petitions to consolidate. Section 2422.2(c) of the regulations provides that only an agency or a labor organization may file a petition to consolidate existing units for which a labor organization holds exclusive recognition. The regulations provide no specific guidance on processing consolidation petitions and the supplementary information that accompanied the proposed regulations and the final regulations shed no light on the issue. The supplementary information related to § 2422.2 accompanying the proposed regulations stated that the “[c]urrent pre-filing requirements applicable to UC petitions are eliminated.” Federal Register, Vol. 60, No. 150 (August 4, 1995). The supplementary information accompanying the final regulations was silent on processing petitions to consolidate units. Federal Register, Vol. 60, No. 250 (December 29, 1995).

1. Agency standing to file petition:

One of the unresolved questions that has been recently raised in a petition is whether the exclusive representative of units in an agency or the national union must agree to the consolidation when an agency files the petition. Until the Authority decides this issue, Regions take the position that an Agency has standing to file a petition to consolidate units for which a national union holds certification even if the certification is held by locals of the same national union in separate units. If the unions involved in the petition object to the consolidation, the Regional Director issues a Notice of Hearing on two issues:

- a. whether the Agency/Activity has standing to file when the unions object and

- b. whether the proposed consolidated unit is appropriate pursuant to section 7112(a).

The issue of whether the national union has authority to file a consolidation petition even though the locals hold the certification has already been decided:

2. A National Union Can File a Petition to Consolidate Units Represented by Local Affiliates under Section 7112(d) of the Statute

Under both the Executive Order program and under the Statute, the term “labor organization” when used for describing the consolidation of units has been interpreted to include a national union that seeks to consolidate units for which its local chapters hold exclusive recognition. In *Internal Revenue Service (IRS)*, 7 A/SLMR 357 (1977) *aff’d Internal Revenue Service, Washington, DC and National Treasury Employees Union*, 6 FLRC 289, n. 2 (1978), the Assistant Secretary found that there was nothing in the Order, the FLRC Report, or the regulations that required the Assistant Secretary to challenge the authority of a national labor organization to file a unit consolidation petition on behalf of its exclusively recognized local chapters. Further, the Assistant Secretary found that the affected employees would be protected from arbitrary action by a national organization seeking a consolidation by the provisions of the Order and the Assistant Secretary’s regulations which provided for an election on the question of any proposed consolidation at the request of either party or 30 percent or more of the affected employees. The FLRC affirmed the Assistant Secretary’s decision that a national labor organization does not need local authorization to file a consolidation petition on behalf of its constituent local chapters.

The Authority also has allowed a national union to consolidate local units. See *U.S. Department of the Air Force, Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio (AFMC)*, 55 FLRA 359, 361 (1999) (citation omitted) (Authority approved a consolidation where a national union sought to consolidate one consolidated unit and six units represented by local affiliates).¹

¹Moreover, there does not appear to be any rule to preclude two different labor organizations from jointly filing a petition to consolidate their units as long as the consolidation occurs within a single agency and meets the appropriate unit criteria.

3. Concepts of Unit Consolidations:

< In *AFMC*, 55 FLRA at 362, the Authority stated that Section 7112(d) of the Statute permits consolidation of two or more bargaining units represented by the same exclusive representative "if the Authority considers the larger unit to be appropriate." This provision was intended by Congress to "better facilitate the consolidation of small units" into more comprehensive ones. *Department of Transportation, Washington, DC (DOT)*, 5 FLRA 646, 652 (1981) (quoting 124 Cong. Rec. H9634 (daily ed. Sept. 13, 1978) (statement of Representative Udall)). Consolidation serves a statutory interest in reducing unit fragmentation and in promoting an effective, comprehensive bargaining unit structure. See *Army and Air Force Exchange Service, Dallas, Texas and American Federation of Government Employees (AAFES), AFL-CIO*, 5 FLRA 657, 661-62 (1981); *Air Force Logistics Command, United States Air Force Wright-Patterson Air Force Base, Ohio and International Association of Fire Fighters, (AFLC Council), AFL-CIO-CLC, (AFLC)*, 7 FLRA 210, 214 (1981).

Previously, case law implied that the purpose of a unit consolidation petition was to consolidate **all** units within an agency for which a particular union holds exclusive recognition. See *DOT*, 5 FLRA at 652 (1981) (Authority denied a petition to consolidate five field units for which a union held recognition and one unit where recognition was at the national union on the basis that the proposed unit would not ensure a clear and identifiable community of interest nor promote effective dealings and efficiency of operations. The Authority noted the small dispersion of field employees compared to headquarters employees. The Authority also noted that the petitioner did not seek to include in the proposed consolidated unit all of the field employee units it represented. However, the Authority, in the alternative, considered whether a consolidated unit of only headquarters employees would be appropriate and denied that also.) In *AFMC*, 55 FLRA at 360, the Authority found a petitioner's request to consolidate six of seven individual units with its national consolidated unit effectuated the purposes of the Statute and consolidation stating:

The purpose of consolidation is to reduce fragmentation of units. See *AAFES*, 5 FLRA at 661-62. The Authority has never imposed a requirement that a consolidation petition eliminate unit fragmentation. The consolidation of six AFGE bargaining units into the current consolidated unit reduces unit fragmentation. The fact that one bargaining unit was not included in the proposed consolidation indicates that a different petition

might have reduced unit fragmentation even more than the petition presented; it does not establish that the current petition does not reduce unit fragmentation.

- < The reference in section 7112(d) to the consolidation of "appropriate" units incorporates the appropriate unit criteria established in section 7112(a). Those criteria provide that a unit may be determined to be appropriate if it will: (1) ensure a clear and identifiable community of interest among the employees in the unit; (2) promote effective dealings with the agency involved; and (3) promote efficiency of the operations of the agency involved. 5 U.S.C. §§ 7112(a). The Authority has identified a number of factors that generally indicate whether these statutory criteria are met, *see generally, United States Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia (FISC)*, 52 FLRA 950, 960-61 (1997), and has consistently applied certain of these factors in consolidation cases. *See U.S. Department of Justice*, 17 FLRA 58, 62 (1985); *AAFES*, 5 FLRA at 660; *DOT*, 5 FLRA at 652. The Regional Director determines whether the proposed consolidated unit conforms to the appropriate unit criteria and that there is no question as to whether the labor organization represents the employees in the proposed consolidated unit.
- < Any unit found appropriate for consolidation must conform to the unit descriptions of the current exclusively recognized units. *Education Division, Department of Health, Education and Welfare, Washington, D.C.*, 7 A/SLMR 312 (1977).
- < In determining whether a proposed consolidated unit will ensure a clear and identifiable community of interest, the following factors are considered:
 - the degree of commonality and integration of the mission and function of the components involved, ("separate missions of each component need only 'bear a relationship' to one another, and the functions need only 'similar or supportive' to warrant consolidation." *Department of the Navy, U.S. Marine Corps and American Federation of Government Employees, AFL-CIO (Department of the Navy)*, 8 FLRA 15, 22 (1982). *See also AAFES*, 5 FLRA at 661 stating that "while the [agency] pointed out the distinct role played by the Distribution Regions, it is clear that their function is integrally related to that of the Exchange Regions").
 - the distribution of employees throughout the organizational and geographic components of the agency,

- the degree of similarity of occupational undertakings of the employees in the proposed consolidated unit, and
- the locus and scope of personnel and labor relations authority and functions. *U.S. Department of Justice*, 17 FLRA 58, 62 (1985).

< In determining whether a proposed consolidated unit will promote effective dealings with and efficiency of operations of the agency, the Authority looks at whether:

- the employees in the proposed unit are subject to the same operational chain of command,
- the degree and nature of functional and organizational integration,
- employee interchange and job similarity, and
- common or uniform policies regarding personnel and labor relations apply throughout the existing units. *Naval Submarine Base, New London Naval Submarine School, Navy Submarine Support Facility New London, Personnel Support Activity New London and Naval Hospital Groton*, 46 FLRA 1354 (1993).

See HOG 49 for specific guidance on developing a record about this topic at hearing.

C. Other references:

Community of interest:

Department of Defense, U.S. Army Corps of Engineers, 5 FLRA 677 (1981).
[consolidation denied - represented employees not sufficiently well-distributed throughout the administrative and geographic structure of the Agency so as to constitute a meaningful consolidated unit of all the Agency employees represented by the Petitioner; the unit sought enjoys no common thread of shared missions, but rather a wide diversion of disparate missions based largely on local geographic conditions; the records also reflected a complete lack of commonality with regard to job classifications and working conditions]

U.S. Army Training and Doctrine Command, 11 FLRA 105, 109 (1983);
[consolidation denied; proposed unit limited to 5 of the 17 TRADOC installations, and the union did not represent all of the employees at any of the five. Most of the employees included in the petition, making up only about 15% of the workforce have different job classifications and working

conditions because of the uniqueness of the mission. Moreover, personnel authority and control of labor relations have historically been delegated to each local installation.]

Department of the Air Force, Air Training Command, Randolph AFB, TX, 12 FLRA 261, 265 (1983); [petition to consolidate NFFE units at the activity denied where Authority found that the employees were involved in disparate missions requiring different job skills, classifications and duties; are not involved in an integrated work process; and do not transfer or interchange among the existing units. Additionally, the proposed consolidated unit would be limited to only 5 of the Activity's 14 geographical locations, constituting only 10% of the activity's total civilian workforce. Authority and control over personnel and labor relations matters historically have been delegated to each local installation commander.]

Department of Health and Human Services, 13 FLRA 39, 42 (1983); [petition to consolidate 4 of HHS 10 regional offices denied where employees not sufficiently well distributed throughout the the administrative and geographic structure of the agency so as to constitute a meaningful consolidated unit. Cited other reasons not dissimilar to above.]

U.S. Army Support Command, Hawaii, 13 FLRA 529, 532 (1983); [units represented by IAM were subject to a reorganization and as a result, the Authority denied consolidation stating that a unit consolidation petition was not the proper vehicle for clarifying previously recognized or certified units to reflect changes caused by reorganizations. Thus, the employees do not share, with each other or with other employees in the prosed consolidated unit common mission, supervision, or uniform personnel practices or labor relations policies. The Authority found that the proposed unit would not ensure a clear and identifiable community of interest.]

Headquarters, U.S. Army Materiel Development and Readiness Command, 13 FLRA 679, 682-83 (1983); [the Authority denied proposed consolidated based on the limited representation across the agency's organization lines for the same reasons cited above.]

U.S. Department of Justice, 17 FLRA at 62. [the Authority denied consolidation proposed by AFGE citing that the proposed consolidated unit encompasses only 3 of 6 bureaus, fragments of the OBDs, which were organizationally treated as a bureau, and an independent agency;

further most of the employees, representing 31% of the work force have divergent career interests and working conditions (attributable to the diverse missions of their respective organizational components). The record reflected a minimal amount of interchange of employees and the majority of job classifications and qualifications as well as the terms and conditions of employment related to the unique functions of the particular organizations in which they were employed.]

Effective dealings/Efficiency of operations:

AAFES, 5 FLRA 657, 661-662 (1981); [consolidation granted. The Authority found that employees in proposed unit are sufficiently well-distributed throughout the organizational and geographical elements which make up AAFES so as to constitute a meaningful consolidated unit of all AAFES employees who are represented by the petitioner. The Authority found that AAFES is an integrated organization with basically a single primary mission, providing retail facilities for eligible users and thus its employees are engaged in relatively similar functional and occupational undertakings throughout the organization. Further, the Authority found that personnel and labor relations authority is centralized extant within AAFES, and AAFES establishes broad policies at the national level. As a result, the Authority found the proposed unit promoted effective dealings and efficiency of operations.]

Air Force Logistics Command, U.S. Air Force, Wright-Patterson AFB, Ohio, 7 FLRA 210, 213 (1981); [granted consolidation to units of firefighters - finding that the proposed consolidated unit, which encompasses all of the fire prevention units of AFLC except those represented by AFGE is appropriate for the reasons cited in *AAFES*. All of the employees represented by the petitioner were within the proposed unit, perform a unique job function, have common overall supervision at the AFLC level and share essentially similar job classifications and organization, and uniform program direction, personnel policies and practices and labor relations practices. The Authority found that the unit would also promote effective dealings because the proposed unit is activity-wide, the employees are sufficiently distributed throughout the organization, so as to constitute a meaningful consolidated unit, and that AF regulations establish personnel and labor relations policy within all of AFLC whose program direction comes from the AFLC level. Finally the Authority stated that the AFLC Fire Program Manager provides overall guidance and expertise to the components within the proposed unit and the major fire protection program policies are established by the AF to ensure standardization. Thus, the Authority stated that the proposed

consolidated unit will promote a more comprehensive, effective bargaining unit structure and will reduce unit fragmentation and thus promote efficiency of agency operations.] (Emphasis added)

Department of the Navy, U.S. Marine Corps, 8 FLRA 15, 23 (1983). [granted consolidation based on the following factors: degree of commonality and integration of the mission and function of the components involved; the distribution of the employees in the proposed unit; and the locus and scope of personnel and labor relations authority and functions. The consolidated unit will provide for bargaining in a single unit rather than in the existing 22 units, thereby reducing fragmentation and promoting a more effective, comprehensive bargaining unit structure to effectuate the purposes of the Statute.] (Emphasis added)

NOTE: in last two cases cited, the Authority granted the consolidation noting that in addition to other factors, all units represented by the petitioner at the time of the proposed consolidation were included in the petition.

Department of Defense, National Guard Bureau and National Federation of Federal Employees, Independent, Department of Defense, National Guard Bureau and National Association of Government Employees, 13 FLRA 232 (1983).

U.S. Customs Service, 8 A/SLMR 221 (1978).

U.S. Department of Defense, National Guard Bureau, 55 FLRA 657 (1999).

U.S. Department of Treasury, Internal Revenue Service and U.S. Department of the Treasury, Office of the Chief Counsel, Internal Revenue Service, 56 FLRA 486 (2000).